

lit.

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

TOANDOS PENINSULA ASSOCIATION,)
Appellant,)

v.)

JEFFERSON COUNTY; STATE OF)
WASHINGTON, DEPARTMENT OF NATURAL)
RESOURCES; and STATE OF)
WASHINGTON, DEPARTMENT OF)
ECOLOGY,)

SHB No. 91-45
and 91-51

Respondents.)

and)

STATE OF WASHINGTON, DEPARTMENT)
OF FISHERIES, and CONTRACT)
HARVESTERS ASSOCIATION, INC.,)

Respondents-Intervenors.)

ORDER ON MOTIONS
FOR SUMMARY JUDGMENT

STATE OF WASHINGTON, DEPARTMENT)
OF NATURAL RESOURCES; and STATE)
OF WASHINGTON, DEPARTMENT OF)
ECOLOGY,)

Appellants,)

and)

STATE OF WASHINGTON, DEPARTMENT)
OF FISHERIES,)

Appellant-Intervenor,)

v.)

KITSAP COUNTY,)

Respondent,)

KITSAP COUNTY LANDOWNERS,)

Respondent-Intervenor.)

1 This matter comes forward on cross motions for summary judgment.
2 It is the appeal from the granting of shoreline permits for subtidal
3 geoduck harvesting by Jefferson County to Department of Natural
4 Resources and the denial of same by Kitsap County.

5 Having considered the following:

6 1. Motion of Toandos Peninsula Association for Summary Judgment,
7 together with the Declarations of Rob Clark and J. Richard Aramburu in
8 Support of Motion for Summary Judgment.

9 2. Motion of Respondent Kitsap County for Summary Judgment, with
10 Affidavit of Renee Beam.

11 3. Ecology's Memorandum in Opposition to Summary Judgment, with
12 Declaration of Donald Peterson in Opposition to Summary Judgment.

13 4. Natural Resources and Fisheries' Response to Toandos Motions
14 for Summary Judgment Re: Whether Master Programs Complied With WAC
15 173-16-060(2)(B), with Affidavit of Eric Hurlbert.

16 5. Motion to Exclude Commissioner to Public Lands Designee due
17 to Appearance of Fairness Doctrine and Conflict of Interest and
18 Memorandum in Support.

19 6. Natural Resources' and Fisheries' Memorandum in Opposition to
20 Kitsap's Motion to Exclude Commissioner of Public Lands' Designee.

21 7. Affidavit of Brian Boyle, Commissioner of Public Lands.

22 8. Natural Resources' and Fisheries' Memorandum in Support of
23 Motion For Summary Judgment To Strike Issue "I" From This Appeal.

1 Together with the records and files herein and being fully
2 advised, we rule as follows:

3 Compliance with WAC 173-16-060(2)(b) Regarding Master Program

4 Amendment for Aquaculture. Appellant, Toandos Peninsula Association
5 (TPA), seeks summary judgment reversing the shoreline permits granted
6 by Jefferson County for subtidal geoduck harvesting.

7 I

8 As grounds for its motion, TPA urges that the State Department of
9 Ecology did not comply with its regulation, WAC 173-16-060(2)(b) which
10 states in pertinent part:

11 (i) Within one month of the effective date of this
12 regulation, the department of ecology shall notify each
13 local jurisdiction in which major subtidal clam or
14 geoduck beds have been identified by the department of
15 fisheries that a program update will be required. The
16 department of ecology shall provide maps showing the
17 general location of each jurisdiction's major subtidal
18 clam and geoduck beds. The department shall also
19 provide information on subtidal clam and geoduck
20 harvesting techniques, environmental impacts,
21 mitigation measures, and guidance on format and issue
22 coverage for submittal of proposed amendments.

23 This Ecology regulation was adopted in 1980. It went on to provide:

24 (ii) Each local jurisdiction with identified
25 major beds shall evaluate the application of its
26 shoreline master program to commercial use of the
27 identified beds. Where necessary, amendments to the
28 master program shall be prepared to better address
29 management and use of the beds. For example, such
30 amendments may be necessary to address newly
31 identified concerns, to coordinate with state wide
32 interests, or to bring policies into conformance with
33 current scientific knowledge.

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II

In 1982, Jefferson County amended its shoreline master program in response to the Ecology regulations. In 1992, TPA challenges Ecology's provision of maps and other information antecedent to Jefferson County's master program amendment. Ecology disputes TPA's challenge. We conclude that TPA is prevented from raising its challenge by the doctrine of laches.

III

The doctrine of laches applies in review of zoning decisions where suit is brought by individuals against owners of nearby property. Buell v. Bremerton, 80 Wn.2d 518, 495 P.2d 1358 (1972). We hold that the doctrine applies with equal force in the circumstances of this case involving amendment to a shoreline master program. The elements of laches, as set out in Buell, are:

. . . 1) knowledge or reasonable opportunity to discover on the part of a potential plaintiff that he has a cause of action against a defendant; 2) an unreasonable delay by the plaintiff in commencing that cause of action; 3) damage to defendant resulting from the unreasonable delay.

The record establishes actual or constructive knowledge by TPA of the 1982 amendment to the Jefferson County Master Program. TPA stipulates that the amendment was made after a public hearing (Motion for Summary Judgment, p. 6, line 3). The amendment was both published in the Jefferson County Master Program and adopted as a state regulation by Ecology. WAC 173-19-240. The record then shows a decade of delay in

1 bringing the challenge. This constitutes an unreasonable delay.
2 Finally, the delay has damaged the respondent, Department of Natural
3 Resources, by inducing planning and shoreline permit application in
4 reliance on the long standing master program. These elements sustain
5 a bar to TPA's challenge under the doctrine of laches.

6 IV

7 Shoreline master programs and amendments thereto must be adopted
8 by Ecology as state regulations under the State Administrative
9 Procedure Act. RCW 90.58.090 and -.120. Both Ecology and Natural
10 Resources cite RCW 34.05.375 which states:

11 *No rule proposed after July 1, 1989, is valid*
12 *unless it is adopted in substantial compliance with RCW*
13 *34.05.310 through 34.05.395 . . . No action based upon*
14 *this section may be maintained to contest the validity*
of any rule unless it is commenced within two years
after the effective date of the rule. (emphasis added.)

15 A similar provision applied to rules adopted before July 1, 1989. RCW
16 34.04.025(5). We conclude that the provision of maps and information
17 required by Ecology's WAC 173-16-060(2) is a requirement in addition
18 to the usual rule adoption procedures of the APA (RCW 34.05.310
19 through 34.05.395). However, our disposition of the 10-year-old
20 challenge in this case, under the doctrine of laches, is entirely
21 consistent with the 2-year statutory limitation on challenges to the
22 other procedural aspects of master program amendment.

23 V

24 Unlike Jefferson County, Kitsap County did not amend its
25
26

1 shoreline master program in response to Ecology's 1980 regulation,
2 WAC 173-16-060(2)(b). An effort to amend was made by Kitsap County
3 which we reviewed, largely on procedural issues, in Kitsap County v.
4 Ecology and Willing, SHB No 83-18 (1983). In that case Kitsap County
5 had submitted master program amendments to Ecology for approval. As
6 these were not satisfactory to Ecology, we sustained Kitsap County's
7 position that it was entitled to make a second submission. To date
8 this has not been achieved. Kitsap County now moves for summary
9 judgment affirmed its denial of shoreline permits for geoduck
10 harvesting on the grounds that Ecology did not comply with its
11 regulation, WAC 173-16-060(2)(b), for amending master programs.
12 Ecology disputes this. We conclude that such a dispute is immaterial
13 to the resolution of this case. The gravamen of Kitsap's position is
14 that because its master program was not amended, no geoduck harvesting
15 may be approved. Yet there is nothing in WAC 173-16-060(2)(b) which
16 would suggest that if amendmnet does not occur the existing provisions
17 of the master program or shoreline management act are in any way
18 affected. Thus the propriety of geoduck harvesting must be determined
19 at trial under the long standing provisions of the Act and existing
20 Kitsap County Master Program.

21 VI

22 The motions by TPA and Kitsap County for summary judgment based
23 on compliance with WAC 173-16-060(2)(b) regarding master program
24 amendment for aquaculture should be denied.

1 Commissioner of Public Lands Designee.

2 Respondent, Kitsap County, moves to exclude the Commissioner of Public
3 Lands or his designee from this matter under the appearance of
4 fairness and conflict of interest doctrines.

5 I

6 The Shoreline Management Act provides for the composition of the
7 Board at RCW 90.58.170:

8 . . . The shorelines hearings board shall be made
9 up of six members. Three members shall be members of
10 the pollution control hearings board; two members, one
11 appointed by the association of Washington cities, and
12 one appointed by the association of county
commissioners, both to serve at the pleasure of the
associations; and the commissioner of public lands or
his designee . . .

13 II

14 The standard for reviewing whether the appearance of fairness
15 doctrine has been violated is:

16 *Would the hearing appear fair to a reasonably*
17 *prudent and disinterested person who had been*
18 *apprised of the totality of the circumstances?*
Smith v. Skagit County, 75 Wn.2d 715, 741, 453 P.2d
832 (1969).

19 III

20
21 Kitsap County correctly points out that its opposite in this
22 litigation is the Department of Natural Resources; that the
23 administrator of Natural Resources is the Commissioner of Public
24 Lands, RCW 43.30.050; and that the Commissioner of Public Lands or his
25 designee sits as one of six members on the Shorelines Hearings Board.

1 Yet this is not the totality of the circumstances. In this case the
2 Commissioner of Public Lands has designated Ms. Nancy Burnett to sit
3 on the Board. We take notice, also, that Ms. Burnett is also
4 designated by the Commissioner of Public Lands to sit on the Energy
5 Facility Site Evaluation Council. In his uncontroverted affidavit,
6 the Commissioner of Public Lands declares:

7 "Neither I nor anyone else in DNR sits in review
8 of Ms. Burnett's actions on the Board."

and

9 "Neither I nor anyone in DNR has any contact with
10 Ms. Burnett concerning any of the activities of DNR,
11 particularly with respect to cases which are pending
12 before the Board."

13 In the totality of these circumstances, we conclude that the hearing
14 would appear fair to a reasonably prudent and disinterested person.

15 IV

16 We address this issue as a full panel because the appearance of
17 fairness issue is directed at the statutory composition of the Board.
18 There has been no contention that Ms. Burnett has any personal
19 interest in the outcome of this case. We have been cited to no
20 authority, and know of none where the statutory composition of a
21 board, alone, constituted a violation of the appearance of fairness or
22 conflict of interest doctrines.

23 V

24 Kitsap County's motion to exclude the Commissioner of Public
25 Land's designee from this matter should be denied.

1 Issue "I" Regarding Dismissal for Failure to Join an Indispensible
2 Party.

3 Appellants, Department of Natural Resources and Department of
4 Fisheries, move to strike issue "I" of the Pre-Hearing Order which is:

5 *Whether this appeal should be dismissed for*
6 *failure of appellant to name as an indispensable*
7 *party to the litigation the City of Winslow?*

8 There was no opposition filed in reply to this motion.

9 VI

10 Each of the shoreline applications for geoduck harvesting at
11 issue, within the outer boundaries of Kitsap County, were made by
12 Natural Resources to Kitsap County which denied them. The above issue
13 "I" seeks dismissal on the premise that the City of Winslow
14 (Bainbridge) perhaps should have been the recipient of Natural
15 Resources' applications, if any, within its limits. Whether this is
16 so is another issue, denominated "H" in the Pre-Hearing Order. No
17 resolution of prerogative between the County and City can justify
18 dismissal of Natural Resource's pending appeals. If the City was not
19 the appropriate decision maker then the case can proceed as the City
20 is not indispensable. If the City was the appropriate decision maker
21 then only those applications for sites within City limits would be
22 affected. The other Kitsap County applications would not. As to
23 applications within the City the proper remedy where the City must
24 decide is to remand the applications for City consideration and not to
25 dismiss on grounds of failure to name a party.

VII

The motion of the Department of Natural Resources and the Department of Fisheries to strike issue "I" regarding failure to join an indispensable party should be granted.

ORDER


1. The motion by Toandos Peninsula Association and Kitsap County for summary judgment based on compliance with WAC 173-16-060(2)(b) are hereby denied.

2. The motion by Kitsap County to exclude the Commissioner of Public Land's designee from this matter is hereby denied.

3. The motion by the Department of Natural Resources and the Department of Fisheries to strike issue "I" of the Pre-Hearing Order relating to failure to join an indispensable party is hereby granted.

DONE at Lacey, WA, this 21st day of February, 1992.

SHORELINES HEARINGS BOARD


HAROLD S. ZIMMERMAN, Chairman

(See Partial Concurrence and Dissent)

JUDITH A. BENDOR, Attorney Member


ANNETTE S. MCGEE, Member


NANCY BURNETT, Member


DAVE WOLFENBARGER, Member


WILLIAM A. HARRISON
Administrative Appeals Judge

BEFORE THE SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

TOANDOS PENINSULA ASSOCIATION,

Appellant,

v.

JEFFERSON COUNTY; State of
Washington DEPARTMENT OF NATURAL
RESOURCES; and State of
Washington DEPARTMENT OF
ECOLOGY,

Respondents.

and

State of Washington DEPARTMENT
OF FISHERIES, and CONTRACT
HARVESTERS ASSOCIATION, INC.,

Respondents-Intervenors.

SHB Nos. 91-45
and 91-51

SEPARATE OPINION
CONCURRING IN PART AND
DISSENTING IN PART

State of Washington DEPARTMENT
OF NATURAL RESOURCES; and State
of Washington DEPARTMENT OF
ECOLOGY,

Appellants,

and

State of Washington DEPARTMENT
OF FISHERIES,

Appellant-Intervenor,

v.

KITSAP COUNTY,

Respondent,

KITSAP COUNTY LANDOWNERS,

Respondent-Intervenor.

1 CONCURRING IN PART AND DISSENTING IN PART

2 I concur in the result and therefore the Board is unanimous in
3 this regard.

4 I dissent from the majority's reasoning in part.

5 I

6 The parties' participation in properly framing, presenting and
7 litigating a legal issue is critical.

8 Laches is an extraordinary defense. Ward v. Richards and
9 Rossano, Inc., 51 Wn. App. 423, 435, 754 P.2d 120 (1988); Brost v.
10 L.A.N.D., Inc., 37 Wn. App. 372, 375-6, 680 P.2d 453 (1984), both
11 reversing laches.

12 *The elements of laches are: (1) knowledge or*
13 *reasonable opportunity to discover on the part of a*
14 *potential plaintiff that he has a cause of action*
15 *against a defendant; (2) an unreasonable delay by the*
16 *plaintiff in commencing that cause of action; (3) damage*
17 *to defendant resulting from the unreasonable delay.*
18 *None of these elements alone raises the defense of*
19 *laches. Buell v. Bremerton, 80 Wn.2d 518, 522,*
20 *495 P.2d 1358 (1972).*

21 My colleagues raise on their own, sua sponte, this equitable
22 defense in the challenge to Jefferson County's issuance of shoreline
23 permits for geoduck harvesting. The Board then decides the laches
24 issue without affording the parties an opportunity to address it.
25 Such an approach would appear to vary from customary judicial
26 restraint.

27 It is this opinion's conclusion the parties have not asserted

1 laches, and the majority opinion errs by addressing it. Instead, the
2 issue of Jefferson County's action and its Shoreline Master Program
3 should be decided solely on regulatory grounds.

4 II

5 It is possible my colleagues believe laches has been sub silentio
6 raised by the parties, though not pled, recited, or argued.^{1/} In
7 such case the majority might, in a more cautious approach, request
8 clarification, and afford the parties an opportunity for briefing.
9 Such an approach would not only protect the parties' right to be
10 heard, but would provide facts and argument to inform the Board's
11 decision.

12 III

13 If one were to assume that laches should be addressed at this
14 stage, the majority opinion has not demonstrated that all three prongs
15 of laches have been met.

16 The first requirement for laches is:

17 *knowledge or reasonable opportunity to discover on the*
18 *part of a potential plaintiff that he has a cause of*
action against a defendant [...]. Buell, supra; emphasis
19 *added.*

20 It has not been shown that Toandos Peninsula Association had a cause
21 of action to challenge the SMP. As a consequence, there is

22
23 ^{1/} The Department of Ecology raised the issue of the statute of
24 limitations for challenging regulations. My colleagues do not address
25 this issue.

1 neither a "circumstance permitting diligence", (see Arnold v. Melani,
2 75 Wn.2d 143, 147, 437 P.2d 908 (1968)), nor "unreasonable delay",
3 Buell, supra.

4 If there had been a cause of action, there is no evidence
5 presented that TPA knew they had a right to pursue such claim. See
6 Ward, supra, at 435. Whether they should have known, is an issue
7 somewhat too attenuated to address in this opinion.

8 My colleagues' opinion also assumes that damages have occurred.

9 IV

10 The issue of Jefferson County's action and its Shoreline Master
11 Program, can simply be decided on regulatory grounds. There is
12 nothing in WAC 173-16-060(2)(b) which would suggest that if Jefferson
13 County Shoreline Master Program ("SMP") amendment were incomplete, the
14 existing provisions of the Master Program or the Shoreline Management
15 Act are not valid. The propriety of geoduck harvesting can still be
16 determined at hearing under the long-standing provisions of the Act
17 and the existing Jefferson County SMP. The Toandos Peninsula
18 Association's motion to dismiss should be denied on these grounds.

19 V

20 Respondent Kitsap County moves to exclude the Commissioner of
21 Public Lands or their designee from participating as a member of the
22 Shorelines Hearings Board due to alleged violations of the conflict of
23 interest or appearance of fairness doctrines. The Commissioner of
24

1 Public Lands is the administrator for the Department of Natural
2 Resources which is a party in this case.

3 There has been no contention, however, that Ms. Nancy Burnett,
4 the designee, has any personal interest in the outcome of this case.
5 Rather, the County challenges the statutory composition of the Board.

6 VI

7 The Shoreline Management Act explicitly provides for the six
8 member Shoreline Hearings Board to include the Commissioner of Public
9 Lands or a designee:

10 [...] The shorelines hearings board shall be made up
11 of six members. Three members shall be members of the
12 pollution control hearings board; two members, one
13 appointed by the association of Washington cities, and
14 one appointed by the association of county
15 commissioners, both to serve at the pleasure of the
16 associations; and the commissioner of public lands or
17 his designee [...]. RCW 90.58.170; emphasis added.

18 The Shorelines Hearings Board simply has no jurisdiction to alter
19 this explicit statutory requirement. Therefore Kitsap County's
20 motion must be denied because the Board is without jurisdiction.

21 DONE this 21st day of February, 1992.

22 SHORELINES HEARINGS BOARD

23 
24 JUDITH A. BENDOR, Attorney Member

25 0131J

26 PARTIAL CONCURRENCE
27 AND DISSENT - BENDOR
SHB Nos. 91-45 & 51

1 **BEFORE THE SHORELINES HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 **STATE OF WASHINGTON,)**
4 **DEPARTMENT OF NATURAL)**
5 **RESOURCES,)**

SHB NO. 91-51

6 **Appellant,)**

7 **and)**

8 **STATE OF WASHINGTON,)**
9 **DEPARTMENT OF FISHERIES,)**

10 **Appellant-Intervenors,)**

11 **v.)**

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

12 **KITSAP COUNTY,)**

13 **Respondent,)**

14 **and)**

15 **KITSAP COUNTY)**
16 **LANDOWNERS,)**

17 **Respondent-Intervenors.)**
18 _____)

19 This matter came on for hearing before the Shorelines Hearings, Board,
20 William A. Harrison, Administrative Appeals Judge, presiding, and Board Members Harold S.
21 Zimmerman, Chairman; Annette S McGee, Judith A. Bendor, Nancy Burnett, O'Dean
22 Williamson and Omar Youmans.

23 The hearing was conducted on March 2, 3, 4, 5, 9, 10, 11 and 12, 1992. In all, 8
24 days were devoted to the hearing on the merits.

25
26 **FINAL FINDINGS OF FACT.**
27 **CONCLUSIONS OF LAW & ORDER**
SHB NO. 91-51

1 Gene Barker & Associates, Olympia, provided court reporting services.

2 Witnesses were sworn and testified. Exhibits were examined. The Board viewed the
3 site of the proposal in the company of Judge Harrison and the parties. The final briefs were
4 filed April 17, 1992. From testimony heard and exhibits examined, the Shorelines Hearings
5 Board makes these

6 FINDINGS OF FACT

7 I

8 This matter concerns the subtidal harvesting of geoducks in Kitsap County.

9 II

10 "Geoduck" is descriptively defined in the dictionary and that definition is set forth here
11 as background:

12 [Chinook Jargon go-duck, of Chinookan origin; akin to Chinook-igwi-
13 neck and -tk. something attached to something else]: a very large edible
14 clam (Panope generosa) that weighs over five pounds, has siphons which
15 when fully extended measure several feet in length and cannot be
16 withdrawn into the shell, and is found burrowing deeply in sandy mud
along the Pacific Coast of North America.

17 Webster's Third New International Dictionary.

18 III

19 Because of their aquatic habitat, the geoducks at issue here are owned by the state. The
20 legislature has declared geoducks to be "valuable" and directed that the State Department of
21 Natural Resources (DNR) shall sell geoducks as a part of state aquatic lands management,
22 RCW 79.96.080 and chapter 79.90 RCW. Likewise, the State Department of Fisheries
23 (WDF) is directed to preserve and protect the geoduck resource. RCW 75.08.012.

1
2 IV

3 The commercial value of geoducks was first recognized in the 1970s. Although DNR
4 conducted a sales program at that time, there was limited demand. This was reflected in the
5 price of five to ten cents per pound to the state.

6 In the 1980s demand rose significantly as geoduck became sought after for sushi as
7 well as clam chowder. While harvesting increased dramatically in the 1980s, state supervision
8 of compliance lagged behind. A monopoly condition arose whereby one Brian Hodgson
9 owned both the geoduck leases from DNR and the freezing plants which processed the
10 geoducks for sale, largely in California. The lack of enforcement, combined with Hodgson's
11 dishonesty, resulted in widespread poaching. Eventually, in the late 1980s, the Hodgson
12 leases were terminated by DNR and Hodgson was tried and convicted.

13 V

14 In the 1990s, DNR has implemented, together with WDF, several reform measures
15 designed to avoid dishonest geoduck harvesting. First, legislation was passed assuring that a
16 bidder's "responsibility" could be taken into account, not merely the amount of bid
17 RCW 79.90.215. Second, DNR has appointed full time compliance officers and purchased
18 two compliance boats. A DNR compliance vessel is now on site during geoduck harvesting.
19 Each day's harvest must be weighed by the DNR compliance officers who also mark the
20 position of the harvesting to assure it remains in the leased area. The DNR compliance boat is
21 also in radio contact with the WDF patrol vessel which is available to assist. These
22 improvements in compliance supervision are funded from geoduck lease revenue. Revenue to
23 the state is now approximately two dollars per pound, up from the five to ten cents per pound
24 of the 1970s.

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VI

There are some 600 million pounds of geoduck in Puget Sound. At the present time, the majority of this population is not commercially feasible to harvest. This is due to factors such as beds that are at too great a depth, beds in the vicinity of sewer outfalls or other pollution risks and other factors. The WDF estimate is that approximately 150 million pounds, or 25%, of all geoducks in Puget Sound, represent the commercially viable or "fishable" stock.

VII

In 1985, the DNR and WDF wrote a "Management Plan and Environmental Impact Statement" for the Puget Sound geoduck fishery. In it there is a commitment to a "sustained yield" harvest. This means that only a given poundage of geoduck will be harvested each year, state-wide, so that that poundage can be taken every year indefinitely. Birth ("recruitment") and growth will annually replace the amounts harvested to sustain the yield.

VIII

The annual maximum poundage that will produce a sustained yield is called the "maximum sustained yield." The maximum sustained yield (MSY) of geoduck throughout Puget Sound is 2%. This means 2% of the fishable stock of 150 million pounds, or 3 million pounds per year. As more is known about the geoduck fishery, the MSY may be adjusted by WDF, subject always to WDF's responsibility to protect the geoduck resource.

IX

Since 1988, geoduck leases have been sold by DNR in Thurston and Pierce Counties. Settlement in a case related to this one has made leasing possible in Jefferson County. Toandos Peninsula Association v. Jefferson County and DNR, SHB No. 91-45 (1992).

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2 X

3 Kitsap County has approximately 40% of the fishable stock of Puget Sound geoducks.
4 This is the largest share of any county.

5 XI

6 On February 19, 1991, DNR, as lead agency, issued a "Determination of Significance"
7 under the State Environmental Policy Act, chapter 43.21C RCW. In doing so it adopted the
8 1985 Management Plan and EIS together with a 1987 study of geoducks by WDF (Goodwin
9 and Pease) and a 1989 study by the U.S. Army Corps of Engineers and U.S. Department of
10 the Interior (Goodwin and Pease), as its environmental documents.

11 XII

12 On the same date, February, 19, 1991, DNR applied to Kitsap County for a shoreline
13 substantial development permit to harvest geoducks county-wide. The application contained
14 maps and legal descriptions showing the sequence and location of five phases of proposed
15 harvesting.

16 XIII

17 On March 15, 1992, Kitsap County wrote to DNR requesting more site specific
18 information. The request cited Section 2.4 of the Geoduck Management Plan adopted by DNR
19 and WDF. That section provided for resurveying the geoduck beds prior to harvest, in part, to
20 identify unpredicted harvest impacts. (P. 104).

21 XIV

22 By return letter of April 25, 1991, DNR replied to Kitsap County as follows:

23 The Environmental Impact Statement section of the Puget Sound
24 Commercial Geoduck Management Plan and Environmental Impact
25 Statement (EIS) states that geoduck beds allocated for harvest have been
26 surveyed by the Department of Fisheries, and that before harvest, the

1 geoduck beds will be resurveyed to better evaluate the geoduck
2 population and its suitability for harvest.

3 In this statement, the EIS recognizes that in the dynamic aquatic
4 environment, conditions may change which would warrant specific
5 changes necessary to protect the geoduck resource, associated habitat,
6 and human health as determined by the Departments of Health,
7 Fisheries, and Natural Resources. A premature resurvey of geoduck
8 beds will not provide useful pre-harvest resource, habitat, and human
9 health information for management of the resource. Also, a premature
10 resurvey of geoduck beds will not provide additional information
11 pertinent to the review of the Substantial Development Permit.
12 Resurveying the geoduck beds at this time would not meet the needs of
13 the fishery, the Shoreline Master Program, nor the intent of State
14 Environmental Policy Act.

15 XV

16 Both DNR and Kitsap County conducted public hearings on the proposal. These were
17 well attended. There was substantial concern and opposition by the public attending the
18 meetings. Concerns included overharvesting of geoducks or poaching as in the past, lack of
19 compliance supervision, concern over effects on fish or crab, sedimentation, noise and the
20 hours of operation.

21 XVI

22 On July 25, 1991, Kitsap County denied DNR's application for a shoreline permit.

23 XVII

24 The DNR proposal consists of harvesting geoducks at least 600 feet from shore
25 (measured from mean high water line) or waterward of the -18 foot depth contour (measured
26 at mean low low water) whichever is farther seaward. The harvesting will extend no further
27 seaward than -70 feet at any tide. The harvesting will be done by divers operating from a boat
(average 30' length). Once on site, the boat's engines are turned off. Smaller pumps and
compressors continue to operate however. These feed oxygen through a hose to each diver

1 and also feed water through a hydraulic line to the hand held nozzle used by the diver. To
2 harvest a geoduck the diver uses the hand held nozzle to emulsify the area around the substrate
3 and pulls out the geoduck. The process leaves a hole an average of three inches deep. These
4 begin to back fill by natural water movement, and disappear after two to seven months.
5

6 XVIII

7 The environmental effects of the proposal may be summarized under the headings:

8 1) geoduck conservation, 2) marine impacts, and 3) upland impacts. We consider these now,
9 in turn.

10 XIX

11 Geoduck Conservation. Conservation of the geoduck depends upon adherence to the
12 maximum sustained yield (MSY). As we have found (Finding of Fact VIII, above) MSY
13 today is 2% statewide, meaning harvest of 3 million pounds per year statewide.¹ This does
14 not, however, mean that every fishable bed will be harvested 2% in every year. To the
15 contrary, some beds will be intensively harvested each year while others go unharvested.
16 According to the Geoduck Management Plan, on average, 75% of the geoduck population is
17 removed from a given bed. Because of the slow rate of natural recruitment (replacement of
18 the resource by birth) a seed stock should be left on each bed harvested. A harvest of 80%, at
19 maximum, leaving 20% of the population as seed stock would be both reasonable and
20 appropriate, on each geoduck bed.

21 As emphasized by the experience of the past, there can be no more important
22 conservation measure than adequate compliance supervision and enforcement of the
23

24 ¹ Despite the poaching of the past, WDF estimates that the average harvest of geoduck since the fishery began is
25 3.6 million pounds, a figure fairly close to today's MSY.

1 conservation rules. As we have found, a DNR compliance boat would be on site whenever
2 harvesting occurs to provide this supervision.

3
4 XX

5 Marine Impacts. The chief marine impacts concern: 1) affect of the geoduck harvest
6 on other species, 2) sedimentation, and 3) affects of pollution upon the edibility of geoducks.

7 1) Effect of geoduck harvest on other species. Public opposition has centered
8 around the perception that geoduck harvesting will be harmful to fish and crab
9 populations. The evidence before us is to the contrary. Ordinary fin fish cannot be
10 expected to suffer harm from the harvesting due to their mobility. Indeed, the harvest
11 of geoducks may result in a short term increase in fish food as infauna are released by
12 digging in the sea bed. More stationary species such as flounders or other "flat fish"
13 would have only 1/10 of one percent of habitat affected by geoduck harvesting. Fish
14 spawning generally occurs in shallower waters than commercial geoduck beds. The
15 effect of geoduck harvesting upon fish is not significant.

16 Crab habitat extends from shallow water to 300 feet of depth. Within this, the
17 "nursery" habitat is from -1 to -10 feet at 0 tide. The foraging habitat comprises the
18 balance. Geoduck harvesting will not impact the crab nursery habitat. It is the
19 nursery, not foraging, habitat which is the limiting factor of crab population. Data
20 collected by WDF from 1970-91 divided crab habitat between geoduck harvest areas
21 and other areas. There was a slight increase in crab abundance in the the geoduck
22 harvest area relative to the other areas. Commercial geoduck beds in Kitsap County
23 are coextensive with only 6.8% of all crab habitat in Kitsap County. The effect of
24 geoduck harvesting upon crab is not significant. A baseline crab study is currently
25

1 being conducted by WDF in Jefferson County geoduck harvesting areas in response to
2 citizen concerns in Kitsap County

3 Sport catch statistics of intertidal clams and oysters bear out the lack of any
4 significant environmental effect from geoduck harvesting on those species.

5 2) Sedimentation. A sediment model pertinent to the proposal establishes
6 several attributes of the sediment likely to result from geoduck harvesting. First, any
7 sediment moving from the site would be borne by current along shore and not on shore.
8 Second, the vast majority of sediment would settle in a matter of minutes. Thirdly,
9 assuming an unlikely worst case scenario with current running directly on shore from
10 the harvest site, the deposition of sediment would be of a thickness ranging from
11 .00003 to .002 centimeter. The impact of sediment desposition on a beach from
12 geoduck harvesting would be negligible.

13 3) Effects of pollution upon the edibility of geoducks. Geoducks may not be
14 harvested within a half-mile radius of sewer outfalls. Polluted sediments would
15 likewise prevent the harvest of geoducks. Ninety days, or less, before harvest the State
16 Department of Health must certify the geoduck bed as acceptable for harvest. The
17 sewer outfalls and polluted sediments, including the Superfund sites at Eagle Harbor
18 and Keyport Naval Station, are known both to the local health district and the State
19 Department of Health. Harvest will not be permitted in areas where pollution of the
20 waters or sediments render the beds unfit for certification by the Department of Health.

21 XXI

22 Upland Impacts. The upland impacts may be summarized as involving:

23 1) noise, 2) hours of operation. 3) duration of the operations and interval between harvests.
24

1
2 1) Noise. The limitation on noise in the residential setting under Kitsap County
3 ordinance is 55 dbh. The noise from the harvesting as proposed would not exceed
4 50 dbh. This would constitute a level consistent with the residential setting on uplands.

5 2) Hours of operation. The request of Kitsap County on this point was that
6 operations be limited to 8.00 a.m. to 5:00 p.m., Monday through Friday, only
7 excluding holidays, in respect of the residential setting on nearby uplands. As noted
8 below, the duration of operations may be from one to two years in the same general
9 area near a residential community. We find the County's request to be both reasonable
10 and appropriate. It has not been shown that this balance unduly restricts either upland
11 or marine uses.

12 3) Duration of the operations and interval between harvests. The harvesting of
13 a geoduck bed may take from one to two years to complete. The time necessary for the
14 bed to regenerate would then determine the next harvest. This time is estimated at 30
15 to 60 years in the Geoduck Management Plan. Market and enforcement considerations
16 may prompt DNR to cease harvesting a bed before harvest is complete. In that event,
17 both the duration of operations and the interval until harvesting is resumed would be
18 less than in the case of a complete harvest.

19 XXII

20 The revenue from geoduck harvesting is \$2 million per year to the state. This is a
21 major revenue source from DNR marine lands. The revenue is distributed as follows:

- 22 . \$1 million: Aquatic Lands Enhancement Account (ALEA).
- 23 . \$400,000: DNR expenses including compliance supervision and leasing
- 24 . \$100,000: WDF Fisheries Patrol
- 25 . \$250,000: Hatchery or laboratory research

1 . \$250,000: Non-geoduck, non-income producing aquatic lands.
2
3 Of all ALEA funds, geoduck harvesting is the largest source. The ALEA funds are distributed
4 through grant allocation to local governments for marine public access and recreation.

5 XXIII

6 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

7 From these Findings of Fact, the Board issues these:

8 CONCLUSIONS OF LAW

9 I

10 We review the proposed geoduck harvesting at issue for compliance with the applicable
11 shoreline master program and the Shoreline Management Act, chapter 90.58 RCW.
12 RCW 90.58.140(2)(b). The state (DNR and WDF) first urge that the Kitsap County Shoreline
13 Master Program (KCSMP) adopted in 1977 and now in effect is not "applicable" as that term
14 is used in RCW 90.58.140(2)(b). The state points out that the State Department of Ecology
15 has amended its guidelines, chapter 173-16 WAC since Kitsap County's adoption of its
16 KCSMP in 1977. While the guidelines were amended, the KCSMP was not. There are
17 various reasons, pointed out by all parties, as to why the KCSMP remains as it does.
18 Notwithstanding these, the KCSMP is the "applicable" master program in its 1977 form now
19 in effect. After adoption as an applicable master program and its approval by Ecology, we do
20 not review proposed development with the Ecology guidelines, chapter 173-16 WAC.
21 Ecology v. Pierce County and Martel, SHB No. 84-26 (1984), Ecology v. Pierce County,
22 Murphy and Nelson, SHB No. 84-28 (1984), and Ecology v. Pierce County and Wilson,
23 SHB No. 84-54 (1985). The state seeks to distinguish the guidelines adopted after the master
24 program in this case from the usual case where guidelines precede the master program. This is
25 a distinction without a difference. First, the Shoreline Management Act confers primary

1 responsibility upon the local government for administering the regulatory program of the Act.
2 Ecology acts in primarily a supportive capacity. RCW 90.58.050. In the area of variances
3 where Ecology's capacity under the Act is greatest, we have held that even there, the master
4 program shall have independent application until amended to conform to Ecology standards.
5 Green v. City of Bremerton and Ecology, SHB No. 81-37 (1982). We cannot see why it
6 should be otherwise for substantial development permits, as here, not involving variance. Our
7 review is for consistency of the proposed development with the KCSMP as presently existing
8 and the Shoreline Management Act (SMA).

9 II

10 Kitsap County cites as the principal reason for its denial of the proposal that it lacked
11 sufficient information to apply the KCSMP and SMA. Both a county, when considering a
12 shoreline proposal, and this Board, on review, must know what is being proposed. There must
13 be enough information to determine the impacts so as to determine consistency with the
14 applicable master program and the SMA. Hayes v. Yount, 87 Wn.2d 280, 552 P.2d 1038
15 (1976).

16 III

17 In Hayes the only description of the proposal was "marine industrial area", a
18 description found inadequate to convey the information needed for applying the master
19 program and SMA. Here, by contrast, there is substantial information concerning the proposal
20 including the method for geoduck harvesting and its related impacts as well as phases and
21 locations of the proposed harvesting.

22 IV

23 It is also true, however, that the permit sought is for county wide operations. Thus,
24 there would be but one permit as opposed to several or many issued in respect of particular
25

1 sites. We have considered this point at length against the background that shoreline permits
2 generally are issued for development at specific sites. Yet there is little about the proposal or
3 its impacts, if properly limited, that would vary from site to site.
4

5 V

6 We conclude that Kitsap County had sufficient information before it to determine
7 compliance of the proposed harvesting with the KCSMP and the SMA as set forth in
8 Hayes, supra.

9 VI

10 Respondents challenge the adequacy of the 1985 environmental impact statement (EIS)
11 as supplemented and adopted by DNR in 1991. The adequacy of an EIS is a question of law.
12 Barne v. Kitsap County, 93 Wn.2d 843, 613 P.2d 1148 (1980). The review is to determine
13 whether the environmental effects and reasonable alternatives are sufficiently disclosed,
14 discussed and substantiated. Adequacy is judged by the rule of reason. Barne, supra. The
15 EIS in question does consider the environmental effects and reasonable alternatives
16 sufficiently. More recent evidence presented on this record confirmed the validity and
17 currency of the EIS. We conclude that the EIS is adequate.

18 VII

19 Respondents also allege that the state ought to have prepared site specific EIS's. We
20 disagree.

21 VIII

22 First, the permit system of the Shoreline Management Act (SMA) is inextricably
23 interrelated with and supplemented by the requirements of SEPA, chapter 43.21C RCW.
24 Sisley v. San Juan County, 89 Wn.2d 78, 569 P.2d 712 (1977). We have previously found
25 that the information before the county was sufficient under the SMA without site specific

1 surveys. It follows that the related EIS is adequate under SEPA without additional site specific
2 EIS's.

3 IX

4 Secondly, the respondents correctly point out that the state's Geoduck Management
5 Plan is a "non-project" proposal under SEPA rules. WAC 197-11-774. The harvesting
6 proposed in Kitsap County is then a "project" proposal. WAC 197-11-704(2)(a). In moving
7 from a non-project to a project proposal, WAC 197-11-443(2) provides:

8
9 A nonproject proposal may be approved based on an EIS assessing its
10 broad impacts. When a project proposal is then proposed that is
11 consistent with the approved nonproject action, the EIS on such a project
12 shall focus on the impacts and alternatives including mitigation measures
13 specific to the subsequent project and not analyzed in the nonproject
EIS. The scope shall be limited accordingly. Procedures for use of
existing documents shall be used as appropriate, see Part Six. (Emphasis
added.)

14 In this case, the subsequent project, harvesting geoducks in Kitsap County, did not involve
15 impacts, alternatives, or mitigation not analyzed in the nonproject EIS for the Geoduck
16 Management Plan. The DNR correctly adopted the Plan EIS, with supplements, under Part
17 Six of SEPA rules allowing the use of existing documents.

18 X

19 The state was not required to conduct site specific environmental review or prepare site
20 specific EIS's before seeking a shoreline permit for the proposed harvesting.

21 XI

22 The harvesting in question is subtidal and therefore lies within a "shoreline of state-
23 wide significance" as that term is used in the SMA. RCW 90.58.030(2)(e)(iii). The policies
24
25

1 applicable to such shorelines are set forth at RCW 90.58.020 and within the KCSMP at Part
2 Six. We review these now, in turn.

3
4 XII

5 Recognize and protect state-wide interest over local interest. The food production and
6 revenue raising aspects of geoduck harvesting render it an activity of state wide interest. With
7 proper limitations it can be conducted so as both to conserve the geoduck resource and result
8 in minimal impact upon both the marine and upland environment. The legitimate interest of
9 quiet enjoyment of upland property is not in conflict with the harvesting of this resource. The
10 harvest would promote the state-wide interest.

11 XIII

12 Preserve the natural character of the shoreline. Geoduck harvesting is unlikely to result
13 in any significant change to the natural character of the shoreline.

14 XIV

15 Result in long term over short term benefit. Geoduck harvesting conducted as
16 proposed, is likely to produce a long term sustained yield of a valuable food item. It has the
17 potential to create both private and public sector jobs, as well. It is in the long term, rather
18 than short term interest.

19 XV

20 Protect the resources and ecology of the shoreline. The harvesting as proposed, if
21 properly limited, would not cause material harm to the resources and ecology of the shoreline.

22 XVI

23 Increase public access to publicly owned areas of the shorelines and increase
24 recreational opportunities for the public As the largest funding source for the ALEA local

1 public access account, geoduck harvesting significantly contributes to public access and
2 recreation on public shorelines.

3 XVII

4 The KCSMP defines "aquaculture" as the culture or farming of food fish, shellfish, or
5 other aquatic plants or animals. Part 2, p. 2-1. The proposed geoduck harvesting is
6 aquaculture under the KCSMP.

7 XVIII

8 Aquaculture is a permitted use under the urban, semi-rural, rural and conservancy
9 environments. KCSMP Use Activities, p. 7-3. We have carefully considered the respondents'
10 contentions that this aquaculture proposal would violate the policies associated with those
11 environments. We find these contentions to be without merit.

12 XIX

13 The proposed geoduck harvesting is alleged to be inconsistent with certain "natural
14 systems" cited by respondents at KCSMP Part 5. These include smelt spawning beds, long
15 shore drift zones and eel grass beds. We have found that fish spawning occurs in shallower
16 waters than the geoduck beds at issue (Finding of Fact XX, above). Moreover, harvesting can
17 and should be kept out of eelgrass beds by permit condition. Lastly, there has been nothing to
18 suggest that the proposal has the potential to significantly affect long shore drift. We conclude
19 that the proposal is consistent with the cited provisions of KCSMP Part 5 relating to natural
20 systems.

21 XX

22 The general regulations of the KCSMP relating to aquaculture are at Part 7, p. 7-5 to
23

1 7-6. These include No. 3 which provides:

2
3 Aquaculture development shall be designed and constructed to
4 harmonize insofar as possible with the local environment, and shall be
maintained in a neat and orderly manner

5 To harmonize with the local environment, the proposal should be limited to the hours and days
6 set forth at Finding of Fact XXI, above. This is 8:00 a.m. to 5:00 p.m., Monday, through
7 Friday, only, excluding holidays.

8 XXI

9 Regulation No. 4, for aquaculture provides (KCSMP, p. 7-5):

10 Aquaculture development shall make reasonable provisions to control
11 nuisance factors such as noise or odor.

12 The proposal should be limited to its asserted maximum noise level of 50 dbh.

13 This is a level consistent with upland residential communities.

14 XXII

15 Regulation No. 10 for aquaculture provides (KCSMP, p. 7-6):

16 Mechanical and/or hydraulic clam harvesting operations, which use a
17 hydraulic harvester or similar floating equipment, shall be required to
18 obtain a Substantial Development Permit. Such a permit shall only be
19 issued if the applicant can show that the proposed operation will not
20 harm fish or shellfish resources, other than those being harvested; will
21 not lead to turbidity of siltation of surrounding property; will be
conducted so as to immediately fill back any trenches it digs up to a
depth not to exceed three inches; and noise of the proposed operation
does not unduly disturb the residents of nearby areas.

22 The applicant has made each of the showings required by this regulation excepting the one
23 relating to back filling trenches, which does not apply. "Trench" is defined by the dictionary
24 as a "a long narrow cut in the ground." Webster's Third New International Dictionary.

1 Geoduck harvesting results in a small hole, not a trench. Even at that, the average depth of
2 the geoduck hole is but three inches at the outset and refills readily.
3

4 XXIII

5 The proposed geoduck harvesting, if conditioned as follows, is consistent with the State
6 Environmental Policy Act, the Shoreline Management Act and the KCSMP:

7 1. HARVEST WITHIN MAXIMUM SUSTAINED YIELD.

- 8 a. DNR and WDF shall make continuing information and research regarding
9 maximum sustained yield (MSY) of geoduck available to Kitsap County when such
10 information is generated and published.
11 b. The maximum sustained yield rate for statewide management of geoduck clams is
12 an average of 2% of fishable geoduck stocks per year. WDF is investigating the
13 regeneration rate of geoduck beds and may produce data that changes the statewide
14 MSY, either on a statewide rate, or with rates applicable to biological regions of the
15 state. If WDF determines a different MSY rate on a statewide basis, then future DNR
16 geoduck sales on a statewide basis shall not exceed the changed statewide MSY. If
17 WDF determines MSY for different biological regions, then further DNR geoduck
18 sales on a regional basis shall not exceed the appropriate regional MSY.
19 c. When calculating whether geoduck sales meet either a state MSY or an MSY for a
20 biological region, the past four years of geoduck sales shall be averaged. Thus, a
21 particular year could exceed MSY, so long as geoduck sales for the past four years
22 averaged do not exceed MSY.

- 23 2. MAXIMUM HARVEST FROM EACH BED. No more than 80% of the
24 geoduck population shall be harvested from each bed.
25

1
2 3. CONTRACT COMPLIANCE BY DNR. DNR shall maintain its current
3 daily monitoring of geoduck harvesting to enforce terms of its contract with harvesters,
4 to enforce the inner boundary of harvest areas (-18 feet below 0 water, minimum 600
5 feet from shore), and to enforce the noise control requirement of its contract. DNR
6 shall not reduce its contract compliance program in Kitsap County except after
7 consultation and agreement with Kitsap County.

8 4. PHONE CONTACT. DNR shall maintain a cellular phone on its contract
9 compliance vessel and publicize appropriate phone numbers to allow shoreline residents
10 to contact DNR and its compliance vessel, and the Washington Department of Fisheries
11 Patrol.

12 5. LOG COMPLAINTS AND COMPLIANCE. DNR shall keep a log of all
13 complaints and compliance activity regarding harvest activities in Kitsap County.

14 6. EELGRASS. DNR shall not sell harvest rights to take geoduck clams from
15 any land that the Department of Fisheries (WDF) has identified as eelgrass bed.

16 7. HERRING SPAWNING. DNR shall not allow geoduck harvesting to occur
17 during herring spawning season in an area identified as a herring spawning ground in
18 WAC 220-110-260, or if identified as a herring spawning ground by WDF.

19 8. STATE DEPARTMENT OF HEALTH. No harvesting shall occur in any
20 area not duly certified by the State Department of Health.

21 9. NOISE CONTROL. DNR shall include contract requirements that geoduck
22 harvesting vessels not exceed 50 dBA measured 600 feet from the vessel.

23 10. TIME OF HARVEST. Harvest shall not exceed eight working hours per
24 day, and those eight hours per day will be between 8 a.m. and 5 p.m. In addition,
25

1 harvest will occur between a half hour before sunset and a half hour after sunrise. No
2 harvesting will be allowed on Saturdays or Sundays or State holidays.

3
4 11. STUDY OF CRAB. WDF shall finish its current study to compare the
5 Dungeness Crab and red rock crab on a harvested geoduck bed to the crab on an
6 unharvested geoduck bed, and to investigate the effects of geoduck harvesting on these
7 crab. It is anticipated that this study will be completed between two and three years
8 after the harvest of the studied bed. The data shall be made available to Kitsap County
9 and for public inspection. The finished report of the investigation shall be transmitted
10 to Kitsap County.

11 12. EXPIRATION. The shoreline substantial development permit shall expire
12 five years from issuance. A new permit shall be required for continued geoduck
13 harvesting.

14 The above conditions are each necessary to achieve consistency of the proposal with the
15 statutes and applicable master program; excepting, however, that the crab study in condition
16 11 is not needed as a basis for the instant decision, but is only intended for possible future use.

17 See Kitsap County v. State, 107 Wn.2d 801, 733 P.2d 526 (1987). We have chosen by
18 condition no. 1 to leave the responsibility for determining maximum sustained yield with
19 WDF. Nothing in the Shoreline Management Act suggests that this authority, relating to a
20 statewide fishery, and traditionally lodged in the state, should be transferred to the several
21 counties. Also, because of the recurring nature of geoduck harvesting, this permit should
22 expire five years from issuance. This condition allows review of the program at that time.
23 See WAC 173-14-060.

24 Finally, we recommend that consideration be given by DNR to reimbursement of the
25 unusual costs incurred by the county in connection with geoduck permitting and harvesting.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
SHB NO. 91-51

XXIV

Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

From the foregoing, the Board issues this:


ORDER

The denial by Kitsap County of the State Department of Natural Resources application for a shoreline substantial development permit is reversed and remanded for issuance with the conditions set forth at Conclusions of Law XXIII, above.

DONE at Lacey, WA, this 9th day of July, 1992.

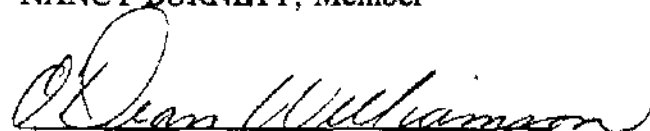
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WILLIAM A. HARRISON
Administrative Appeals Judge

S91-51F